UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,384	03/10/2004	Yun Namkoong	04-06	3202

22443 7590 02/26/2008 LAW OFFICE OF MONICA H CHOI P O BOX 3424 DUBLIN, OH 430160204	**EXAMINER** DANG, HUNG Q

ART UNIT	PAPER NUMBER
2621	

MAIL DATE	DELIVERY MODE
02/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	10/797,384	NAMKOONG ET AL.
	Examiner	Art Unit	
	HUNG Q. DANG	2621	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>31 January 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>*1-3,5,7-9,12-14,16 and 18-20*</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see attachment.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 01/31/2008 have been fully considered but they are not persuasive.

At pages 6-7, Applicant argues that claims 1 and 12 recite determining whether the data is a predetermined type of data, terminating retrying of reading or writing of the data if the required time period is greater than a remaining retrying limitation time **_only when_** the data is of the predetermined type of data, and terminating retrying of reading or writing of data if the total count of retries is greater than the predetermined maximum number of retries **_only when_** the data is not the predetermined type of data while Fig. 5 and Fig. 6 of Hirata show the respective operations for both cases of the data is A/V data and management data.

In response, the Examiner respectfully disagrees. In contrary to Applicant's arguments that col. 9, lines 1-8 of Hirata only states the effect of the flowcharts of Figs. 5 and 6 of Hirata, it is clear that col. 9, lines 1-8 describes another embodiment of Hirata's invention. At column 9, lines 1-8, Hirata states, "the effect that the reading and writing command can be completed within the prescribed time required for the data such as the image data and the audio data of which the processing in real time is important and the retrying operation can be performed as much as possible to make reading and writing without deterioration of the reliability for the data such as the management data of which the reliability is important." The effect that Hirata refers to is the one that results in by combining Fig. 5 and Fig. 6 so that the image data and the

audio data of which the processing in real time is important would be processed using

the flowchart shown in Fig. 6 and the management data of which the reliability is

important would be processed using the flowchart shown in Fig. 5. In other words, by

this embodiment, Hirata discloses "determining whether the data is a predetermined

type of data, terminating retrying of reading or writing of the data if the required time

period is greater than a remaining retrying limitation time (flowchart shown in Fig. 6)

only when the data is of the predetermined type of data (image/audio data), and

terminating retrying of reading or writing of data if the total count of retries is greater

than the predetermined maximum number of retries (flowchart shown in Fig. 5) **_only_**

when the data is not the predetermined type of data" (management data).
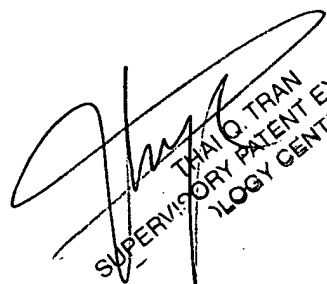
At page 8, Applicant argues that "the type of data is not even determined until

step 117 in Fig. 5 or step 218 in Fig. 6 after the retrying has completely failed by

expiring the maximum number of retry count N or the maximum allowed retry time T, for

either the A/V data or the management data."

In response, the Examiner respectfully disagrees. Although not described so in

embodiments shown in the flowcharts of Figs. 5 and 6, the embodiment described at

column 9, lines 1-8, clearly implies that the type of data must be determined before the

retry parameters including the retry count and retry time are determined because in that

paragraph, Hirata describes two different branches of operations are used for two

different types of data: if it is image/audio data, use retry time, otherwise, if it is

management data, use retry count. It is very clear that, for this embodiment to work,

Hirata means the type of the data to be determined first before selecting the

corresponding type of operation.

For those reasons, the rejections stand as previously presented.